

the unlawful discharge of at least 4,571 barrels (approximately 192,000 gallons) of crude oil.

2. Beginning on or about February 2, 2000, a pipeline known as the “North Ship Pipeline”, owned by Sun Pipe Line Company and operated by Sunoco, Inc. (R&M), cracked and began leaking at least 4,571 barrels (approximately 192,000 gallons) of crude oil into a 145 acre wetland pond (“Impoundment”) and nearby wetlands and adjoining shoreline within the John Heinz National Wildlife Refuge. The leak was undetected for 3 days, discharging oil continuously.

3. The John Heinz National Wildlife Refuge (“Refuge”) at Tinicum, located in Delaware and Philadelphia Counties, Pennsylvania, is owned by the United States and managed by the United States Department of the Interior, Fish and Wildlife Service.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345; 33 U.S.C. § 1321(b)(7)(E); and 33 U.S.C. § 2717(b).

5. Venue is proper in the Eastern District of Pennsylvania, pursuant to 28 U.S.C. §§ 118(a), 1391(b); 33 U.S.C. § 1321(b)(7)(E); and 33 U.S.C. § 2717(b).

6. Authority to bring this action is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519 and 33 U.S.C. § 1366.

III. DEFENDANTS

7. Defendant Sunoco, Inc. (R&M) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. At all times relevant to this action, Defendant Sun Pipe

Line Company was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. On information and belief, in March of 2002 Sun Pipe Line Company merged with Sunoco Texas Pipe Line Company and is now a corporation organized and existing under the laws of the State of Texas.

8. Defendant Sunoco Inc. (R&M) is a subsidiary of Sunoco, Inc.

9. Defendant Sun Pipe Line Company is a subsidiary of Sun Pipe Line Company of Delaware, which is also subsidiary of Sunoco, Inc.

10. At all times relevant to this action, Sun Pipe Line Company was the owner of the North Ship Pipeline (hereinafter, "Sunoco Pipeline" or "North Ship Pipeline").

11. At all times relevant to this action, Sunoco, Inc. (R&M) was the operator of the North Ship Pipeline.

IV. BACKGROUND

12. The John Heinz National Wildlife Refuge ("Refuge") consists of an area of approximately 1000 acres and is situated between the Eastwick Section of Philadelphia, the Philadelphia International Airport, and Darby Township, Delaware County, Pennsylvania.

13. The Refuge contains the largest remaining freshwater tidal wetland area in Pennsylvania, on the eastern end of what was once a larger 5700 acre wetland known as Tinicum Marsh. Situated within the Refuge adjacent to Darby Creek is a shallow non-tidal 145 acre fresh water wetland pond, known as the "Impoundment". Water is exchanged between the Impoundment and Darby Creek through gated dikes. Darby Creek flows into the Delaware River approximately 4 miles downstream from the Impoundment.

14. In 1955 the Gulf Oil Corporation, which at the time owned the 145 acre wetland Impoundment, donated it to the City of Philadelphia to be administered for the benefit of wildlife and visitors. The area was then known as the “Tinicum Wildlife Preserve”. The open water, along with the adjacent heavily vegetated wetlands, formed an ideal habitat for thousands of migratory waterfowl.

15. In 1972 Congress passed legislation creating the “Tinicum National Environmental Center” as part of the National Wildlife Refuge System, to preserve and protect the largest remaining freshwater wetland in Pennsylvania and the surrounding habitats. The legislation authorized the Secretary of the Interior to acquire up to 1200 acres, including the 145 acre wetland Impoundment. (16 U.S.C. § 668dd, Pub. L. 92-326, June 30, 1972, 86 Stat. 391). The Congressional mandate for the Refuge System and its individual refuges was, among other things, to “provide for the conservation of fish, wildlife, and plants, and their habitats within the System; . . . ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans; . . . and assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge.” 16 U.S.C. § 668dd(a)(4). The Refuge provides recreational activities including boating, fishing, hiking, birdwatching, and cross country skiing, and serves as a regional environmental educational center.

16. In November 1991, by an act of Congress, the name of the Tinicum National Environmental Center was changed to “The John Heinz National Wildlife Refuge at Tinicum” in honor of the late Senator who helped preserve Tinicum Marsh.

17. Migratory birds within the Atlantic Flyway, such as geese, herons, egrets, killdeer, sandpipers, shorebirds, and a large variety of ducks, use the Refuge as a resting/feeding spot during spring and fall flights. Over 300 species of birds have been observed in and around the Refuge, 85 of which nest there.

18. The Refuge provides habitat for opossums, fox, raccoons, muskrats and other small animals. Eight species of turtles, three species of snakes, two species of toads and six species of frogs inhabit the Refuge. The Refuge's 145 acre wetland Impoundment is one of the few places in Pennsylvania where the state-endangered red-bellied turtle and southern leopard frog can be found.

19. When Gulf donated the 145 acre wetland Impoundment to the city of Philadelphia in 1955, it retained a small parcel under which its oil pipelines, including the North Ship Pipeline, are buried. The parcel covering the North Ship Pipeline was later conveyed from Gulf to Chevron, Inc, and then from Chevron, Inc. to Sun Pipe Line Company.

20. Even though the area surrounding it is owned by the United States and managed by the FWS, on information and belief a parcel of land covering the North Ship Pipeline is currently owned and managed by Sun Pipe Line Company and/or by Sunoco Inc., (R&M).

21. On information and belief, at all times material to this complaint, Sunoco's North Ship Pipeline was a twenty four-inch diameter, 3.1 mile long steel pipeline, installed between 1948 and 1952, that intermittently transferred crude oil from Sunoco's Hog Island Wharf, located on the Delaware River near the Philadelphia International Airport, to Sunoco's Darby Creek Tank Farm, located across the Interstate 95 highway corridor. Sunoco stores crude oil at

the Darby Creek Tank Farm pending delivery to one of its refineries for processing.

22. Sunoco's North Ship Pipeline traverses the Wildlife Refuge along the east shore of the Impoundment for approximately 1 mile, running directly under the Impoundment and other wetland areas. On information and belief, the Sunoco North Ship Pipeline was at all times material to this complaint buried at depths ranging from 0-10 feet below the ground, and was covered with a mix of mature trees, brush, and wetland plants.

V. FACTUAL ALLEGATIONS

23. On information and belief, on February 2, 2000, Sunoco initiated the transfer of approximately 2,000,000 (two million) barrels of crude oil from a vessel at the Hog Island Wharf to the Darby Creek Tank Farm, via Sunoco's North Ship Pipeline.

24. On February 5, 2000, a visitor to the Refuge reported oil odors to U.S. Fish and Wildlife Service personnel, who, upon investigation, observed oil on the ground along the shoreline of the 145 acre wetland Impoundment, and pooling under the ice in the vicinity of the Sunoco North Ship Pipeline. FWS personnel immediately reported the spill to Sunoco. Upon confirmation, Sunoco reported the spill to federal oil spill response authorities at the National Response Center and to Pennsylvania's Department of Environmental Protection.

25. The oil spill into the Refuge Impoundment and surrounding area resulted from a 16-inch horizontal brittle fracture near the weld of the 40 degree mitered joint in Sunoco's North Ship Pipeline. On information and belief, the spill began on or about February 2, 2000, and went undetected by Sunoco for a three day period, discharging oil continuously throughout the three

days, until it was noticed by a visitor to the Refuge. Sunoco's records indicate that as much as 7,317 barrels (approximately 310,000 gallons) of crude oil were lost from the total volume off-loaded from the vessel at Hog Island beginning on February 2, 2000.

26. The fractured Sunoco North Ship Pipeline discharged at least 4,571 barrels of oil (approximately 192,000 gallons) into the 145 acre wetland Impoundment and adjoining shoreline. The spilled oil pooled beneath the top layer of the ice covering the Impoundment, and created a sheen upon, discoloration of the surface of, and plume of oil under, the ice.

27. The oil discharged by the ruptured Sunoco North Ship Pipeline contains components which are toxic to aquatic organisms, birds, wildlife and vegetation. The oil discharged by the fractured Sunoco North Ship Pipeline caused injury to Natural Resources located within the Refuge, including: habitat for migratory birds and wildlife, fish, reptiles, amphibians, surface waters, shoreline, soils, sediments, and benthic microorganisms. The oil discharged by the fractured Sunoco North Ship Pipeline injured the habitat of the red-bellied turtle, which is currently listed on the Commonwealth of Pennsylvania's List of Threatened Species.

28. For the first 10 weeks following the spill, access to the Refuge was extremely limited. For 6-9 months following the spill, several sections of the Refuge were closed to the public. Certain sections of the Refuge where restoration activities are focused continue to this day to be closed to the public.

29. On information and belief, the following factors caused or contributed to the fractured Sunoco North Ship Pipeline and resulting oil spill of at least 4,571 barrels (approximately 192,000 gallons) into the Refuge wetlands and adjoining shoreline:

- a. Sunoco's North Ship Pipeline was defective at or near the welded mitered joint near where the fracture occurred. Among other causes, the miter joint failed due to the pressure surge associated with the initiation of the delivery of crude oil into a cold pipe, coupled with thermal contraction stresses. This condition was exacerbated by strain aging of the steel material from which the North Ship Pipeline was constructed.
- b. Sunoco, Inc. (R&M) and /or Sun Pipe Line Company failed to engage in prudent pipeline operation and maintenance, including failing to replace mitered joints in the North Ship Pipeline.
- c. Sunoco, Inc. (R&M) and /or Sun Pipe Line Company failed to employ an effective leak detection system for the North Ship Pipeline.
- d. Sunoco, Inc. (R&M) and /or Sun Pipe Line Company failed to perform adequate and regular pressure testing on the North Ship Pipeline during the delivery of crude oil initiated on February 2, 2000, or before that time.
- e. Sunoco, Inc. (R&M) and /or Sun Pipe Line Company experienced operational errors during the several days the oil spill was occurring.
- f. Sunoco, Inc. (R&M) and /or Sun Pipe Line Company made management decisions that, either directly or indirectly, caused or contributed to the fractured Sunoco North Ship Pipeline and resulting oil spill of at least 4,571 barrels into the Refuge wetlands.

VI. STATUTORY AND REGULATORY FRAMEWORK

A. Prohibition of Oil Discharges

30. In 1972, Congress enacted the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

31. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States.

32. The term “oil” is defined in Section 311(a)(1) of the CWA, 33 § 1321(a)(1), as “oil of any kind or in any form,” including “petroleum.”

33. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, emptying or dumping, except as specifically excluded.

34. Sections 311(a)(7) and 502(5) of the CWA , 33 U.S.C. §§ 1321(a)(7)& 1362(5) & § 1321(a)(7), define the term “person” to include an individual, firm, corporation, association, and a partnership.

35. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” The term “navigable waters” is further defined by EPA regulations at 40 C.F.R. §§ 112.2.

36. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) defines “onshore facility” to mean any facility ... of any kind located in, on, or under, any land within the United States other than submerged land.

37. Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) defines “owner or operator” to mean, in the case of an onshore facility, any person owning or operating such onshore facility.

38. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7,

1973), has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States are discharges of oil that (a) violate applicable water quality standards, or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

B. Civil Penalties

39. Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. § 19.4, provides in relevant part, “[a]ny person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of . . . [Section 311(b)(3)], shall be subject to a civil penalty” in an amount up to \$1,100 per barrel of oil discharged, for discharges occurring after January 30, 1997.

40. Pursuant to Section 311(s) of the CWA, 33 U.S.C. § 1321(s), any amounts received by the United States for actions under Section 311 shall be deposited in the "Oil Spill Liability Trust Fund" established under 26 U.S.C. § 9509 to address future discharges and substantial threats of discharges of oil.

C. Natural Resource Damages under the Oil Pollution Act

41. Pursuant to Section 1002(b)(2)(A) of OPA , 33 U.S.C. § 2702(b)(2)(A), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of discharge of oil, into or upon the navigable waters or adjoining shorelines, is liable for damages for injury to, destruction of, loss of, or loss of use of Natural Resources, including the reasonable costs of assessing such damages.

42. “Natural Resources” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20), include land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, and includes the services provided by such resources to other resources or to humans.

43. Pursuant to Section 1006(a)(1) of OPA, 33 U.S.C. § 2706 (a)(1), liability for injuries to Natural Resources belonging to, managed by, controlled by, or appertaining to the United States shall be to the United States.

44. The Secretary of Department of the Interior, Fish and Wildlife Service is designated pursuant to Section 1006(b)(2) of OPA, 33 U.S.C. § 2706(b)(2), and the National Oil and Hazardous Substance Pollution Contingency Plan (40 C.F.R. § 300.600 et seq.) as Trustee for Natural Resources injured by the discharge of oil into the John Heinz National Wildlife Refuge.

45. The FWS is authorized to assess injuries to federal Natural Resources caused by the discharge of oil and to develop and implement a plan to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources. 33 U.S.C. § 2706 (c)(1).

46. The measure of Natural Resource Damages under OPA includes: the cost of restoring, rehabilitating, replacing or acquiring the equivalent natural resources; the diminution in value of such resources; and reasonable cost of damage assessment. 33 U.S.C. § 2706(d)(1).

47. Under Section 1006(f) of OPA, 33 U.S.C. § 2706(f), the sums recovered by a trustee for injured Natural Resources must be used to assess Natural Resource Damages, and develop and implement a plan to restore, rehabilitate, replace or acquire the equivalent of the injured Natural Resources, and to reimburse or pay costs associated with such actions. Any excess recoveries

shall be deposited into the "Oil Spill Liability Trust Fund" established under 26 U.S.C. § 9509 to address future discharges and substantial threats of discharges of oil.

VII. VIOLATIONS OF CWA/OPA

48. The John Heinz Refuge's 145 acre Impoundment and surrounding wetlands are "navigable waters" of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

49. Crude oil in Sunoco's North Ship Pipeline is "oil" within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and Section 1001(23) of OPA, 33 U.S.C. § 2701(23).

50. "Oil" as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321 (a)(1), and Section 1001(23) of OPA, 33 U.S.C. § 2701(23) has been discharged by Sunoco into navigable waters of the United States and adjoining shorelines located within the John Heinz National Wildlife Refuge.

51. The oil spilled from the Sunoco North Ship Pipeline into the Refuge Impoundment and surrounding areas constituted a "discharge" of oil into navigable waters and adjoining shoreline as defined in Section 311(a)(2) of the CWA, 33 U.S.C. §1321(a) (2), and Section 1001(7) of OPA, 33 U.S.C. 2701(7).

52. The discharge of at least 4,571 barrels (approximately 192,000 gallons) of oil from the fractured Sunoco North Ship Pipeline constitutes a discharge in a quantity harmful to the public health or welfare or environment of the United States, within the meaning of Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), and 40 C.F.R. § 110.3.

53. The quantity of oil discharged from the fractured Sunoco North Ship Pipeline was sufficient to and did cause a violation of applicable Federal water quality standards codified at 40 C.F.R. § 141.61 and a film and/or sheen upon, or discoloration of the surface of, as well as a plume beneath, the 145 acre wetland Impoundment and surrounding areas.

54. The fractured Sunoco North Ship Pipeline is a "facility" as defined in Section 311 (a)(10) of the CWA, 33 U.S.C. § 1321 (a)(10), and Section 1001(9) of OPA, 33 U.S.C. § 2701(9).

55. Defendants Sun Pipe Line Company and Sunoco, Inc. (R&M) are "persons" within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. § 1321(a)(7) and 1362(5), and the "owner" and "operator", respectively, of the North Ship Pipeline, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

56. Defendants are each a "responsible party" as defined in Section 1001(32)(E) of OPA, 33 U.S.C. § 2701(32)(E).

57. Natural Resources at the John Heinz National Wildlife Refuge, and services provided by those Resources, have been injured, destroyed, or lost as the result of Sunoco's discharge of oil into navigable waters and adjoining shoreline, within the meaning of Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2). These lost, injured, or destroyed Natural Resources and services include, but are not limited to: habitat for migratory birds and wildlife, fish, reptiles, amphibians, surface waters, shoreline, soils, sediments, benthic microorganisms, and recreational use of the Wildlife Refuge.

VIII. CLAIM

(Civil Penalties)

58. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 57 above.

59. Defendants' discharge of oil as alleged herein violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

60. Defendant Sunoco, Inc. (R&M) is therefore liable for civil penalties of up to \$1,100 per barrel discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. § 19.4.

61. Defendant Sun Pipe Line Company is therefore liable for civil penalties of up to \$1,100 per barrel discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 40 C.F.R. § 19.4.

(Natural Resource Damages)

62. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 57 above.

63. Defendants are jointly and severably liable for Natural Resource Damages under Section 1002 (b)(2)(A) of OPA, 33 U.S.C. § 2702 (b)(2)(A), for the discharge of oil as alleged herein, including, the cost of restoring, rehabilitating, replacing or acquiring the equivalent Natural Resources and the services they provide; the diminution in value of such resources; and the reasonable cost of damage assessment.

IX. PRAYER FOR RELIEF

64. WHEREFORE, the United States respectfully requests that the Court grant the following relief:

65. A judgment making each Defendant liable for, and ordering each Defendant to pay to the Oil Spill Liability Trust Fund, civil penalties for violations of Section 311(b)(3) of the CWA , in an amount up to \$1,100 per barrel of oil discharged.

66. An award for Damages for injury to Natural Resources, including unreimbursed costs for response and assessment actions.

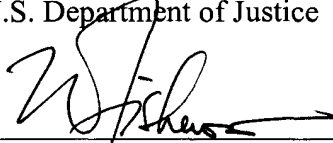
67. An order awarding the United States its costs and disbursements of this action; and

68. The granting of such other relief as the Court deems appropriate.

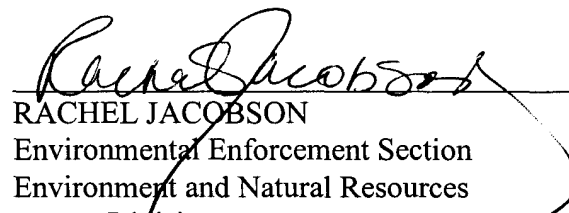
Respectfully Submitted,

FOR THE PLAINTIFF UNITED STATES:

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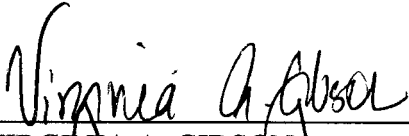


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